IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELALTE JURISDICTION

CRIMINAL WRIT PETITION NO. 1608 OF 2005

Padvavati Ganpatrao Hule,
Age 80 years, Occ : Housewife,
R/at Room No.5, 3rd floor,
Sulbha Sadab, Shradhanand Road,
Vile Parle (E) Mumbai- 400057.

At present R/at C/o Mandakini Hule,
Nargis Cottage, Huhu Beach,
Next to Citizen Hotel, Juhu,
Mumbai-400049 ..Petitioner
(Orig.Complainant.)

Vs.

1.Sr. Inspector of Police,
Vile Parle (E), Mumbai-57.

2. The Deputy Inspector of Police,
Zone-IX Bandra, (West),
Mumbai-400050.

3. Jt.Commissioner of Police,
Having office at General
Branch, Head Office, Mumbai.

4. The Commissioner of Police,
Having office at Commisnerate
of police, Opp. crawford Market,
Mumbai -400001. ..Respondents.

Shri S.V. Marwadi for the petitioner.
Mrs. P.H. Kantharia, A.P.P. for the State.
Shri K.S. Patil, advocate for intervenor

CORAM : S.S.PARKAR AND
ANOOP V. MOHTA, JJ.

DATE : 18.8.2005

P.C.

. The petitioner, who had lodged the complaint

with the Vile Parle (East) Police Station, against the landlord for the offences under sections 448,454,457 and 380 of Indian Penal Code, has filed this petition, inter alia seeking direction for transfer of the investigation of the complaint to any other investigating agency.

2. On 20h May, 2005, after her dispossession from the premises, the petitioner was claiming to be the tenant in respect of her premises, which was situated near the building of the accused in Vile-Parle (East), Bombay. The complaint was registered but the grievance made in the petition is that the investigation is not being properly made at the behest of the accused. It is not in dispute that this complaint was preceded by various civil litigations between the parties in City Civil Court, Bombay and this Court, as well as the proceedings under Section 145 of the Code of Criminal Procedure which are pending in Metropolitan Magistrate Court, since the year 1993.

3. In response to this objection, a reply affidavit dated 14th July, 2005 has been filed by the Police Inspector, Mr. Pandurang Ramrao Tangadpalle

attached to the Vile Parle Police Station. In the affidavit he has denied the allegations made in the petition, but in paragraphs 3 and 7 of the reply affidavit, he has stated that the dispute between the petitioner i.e. the complainant and the accused is purely of a civil nature. At the same time, it was stated in paragraph 6 of the affidavit that he is still conducting the investigation. The grievance made on behalf of the petitioner is that though the accused was in custody from 30th May, 2005 to 6th June, 2005, no effective investigation was made. Secondly, when the accused was released on bail by the Magistrate on 6th June, 2005 the investigating officer was not present in Court, nor case diary was produced, which is reflected in the order of the Metropolitan Magistrate. Though the officer has explained his absence from that Court stating that he had to attend the Sessions Court on that very day.

4. However, If the officer asserts in the affidavit filed in this petition, that it is purely a case of civil nature, there would be no effective investigation made in the complaint. Merely because the complaint was preceded by civil litigations between

the parties, it cannot be a ground to ignore the complaint, as being of a civil nature. When t he civil litigation is pending between the parties it is difficult to understand how dispossession could take place without the orders of the Court. In any case, the complaint requires to be investigated thoroughly with the assistance of the complainant. One grievance made by the Investigating Officer is that though there is a charge of theft the list of the property has not been submitted, which was the subject matter of the theft.

5. In any way, considering the aforesaid circumstances, without casting any aspersion on the present investigating Officer, we feel that it would be highly desirable that some other police officer undertakes further investigation in the complaint. Even the learned A.P.P. has stated that the present investigating officer has no objection, if the investigation of this complaint is handed over to some other agency. Since the premises in question are situated at Vile Parle (East), we feel it would be convenient for the Andheri (East), Police Station to investigate the complaint.

6 We, therefore, direct that further investigation in C.R.No. 253/2005, registered with the Vile Parle (E) Police Station shall be made by the Andheri (E) Police Station. The Sr. Inspector of Andheri (E) Police station shall handover the further investigation of this complaint to a competent Inspector of Police, attached to that Police Station who will conduct the same in accordance with law, without being influenced by any observations made in this order, which are made only for the purpose of disposing of this petition. Petition is disposed of accordingly.

(S.S. PARKAR, J.)

(ANOOP V.MOHTA,J.]